IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY, *Plaintiff in Error*, v. STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.* *Defendant in Error.*	Nos. 155 and 156.

SUPPLEMENTAL BRIEF FOR APPELLANT.

By agreement of counsel on file, red letter page 68 in case 155 shows correctly on the bottom line of figures the "total cost construction, equipment, etc., State of Florida." The figures occupying that same space on page 57 of record 156 were put there by the mistake of a copyist. This agreement the court ordered us to print, but the Clerk of the Court subsequently informed us that the Chief-Justice said printing would be unnecessary and that we might simply call attention in the proper manner to the figures. The correct figures, and those which should be on the bottom line of figures on page 57, record 156, are as follows:

GRAND TOTAL COST CONSTRUCTION, EQUIPMENT, ETC., STATE OF FLORIDA.

Charged to Construction or Equipment.	Total Cost to June 30, 1905.	Total Cost to June 30, 1904.	Cost per Mile.
$406,964 12	$11,591,334 03	$15,666,713 97	$20,605 42

From this it appears that while the cost of construction per mile of the whole line of the Seaboard Air Line Railway is $21,238.18, the cost per mile of the road in Florida is $20,605.42, making a difference per mile of $632.76.

Mistakes of Counsel for Appellee.

The chief object of this brief is, by permission of the court, to correct what we claim were erroneous statements made by counsel for appellee in his oral argument.

1st. He insisted that the Seaboard Air Line Company had kept no separate account of its operations in Florida, claiming that the results set forth in the report were reached by dividing the accounts kept for the whole line according to mileage proportionately between Florida and the whole system. To show the error into which counsel fell, we call attention to the fact that, as is shown on page 46, the mileage for Florida is 753.99 miles and the mileage for the whole system (page 48) is 2,610.97 miles. Calculation shows that Florida's percentage of the total mileage is 28.87 per cent.

Now let us turn to page 74, Rec. and we find that the total passenger earnings of the entire system, item 8, are . . . . . $3,254,711.64.

If the Seaboard Air Line Railway obtained the passenger earnings from Florida by taking 28.87 per cent of the passenger earnings for the whole line, they would be $939,635.25.

Instead, they are, item 8, page 73, Rec. . $839,229.34.

Again on page 74, item 18, we find that the total freight earnings for the entire system are $9,269,138.72;
28.87 per cent of this would be . . . . . $2,665,000.34.
Instead, we find the total freight earnings in State of Florida to be, item 18, page 73, Rec. . . . . $1,960,731.86.

These figures show conclusively that appellant company did not determine earnings from operation within the State of Florida by dividing the accounts for the whole system according to mileage proportionately between Florida and the entire line.

Note again, that on page 72, Rec. employees and salaries in the State of Florida are itemized, including total number of days worked, total yearly compensation, and average daily compensation.

Note again, on page 73, Rec. (black letter 61*A*) our traffic and mileage statistics in the State of Florida; altogether, fifty separate items, each relating to the business in the State of Florida. On page 74 (black figures 61) are precisely the same fifty items for the whole system.

Some interesting differences appear in comparing these last two pages. For example:

Florida: Item 16, page 73, Average amount received for each ton of freight . . . . . $1.01336.
Whole line: Item 16, page 74, Rec. Average amount received for each ton of freight . . $1.76802.
Florida: Item 17, page 73. Average receipts per ton per mile . . . . . .00815.
Whole Line: Item 17, page 74. Average receipts per ton per mile . . . . . .01177.

Here we see that both these differences are in favor of the whole line as compared with the State of Florida. That is to say, these two items when compared with each

other show that in Florida freight rates are relatively cheaper than they are for the whole line. The whole line receives not only a greater sum for each ton of freight it handles, but it also receives a considerably larger sum per ton per mile.

The next error of counsel for the appellee was the statement we understood him to make, that appellant's report as to operations, etc., was only admitted in evidence for the purpose of showing that the company had complied with the law of Florida in filing it.

The Record shows, page 31, that the appellee produced and filed as evidence this report, as well as also the annual report of the Railroad Commission. There was no objection to it, and the reports were received and considered as evidence.

The order is as follows:

> "Supreme Court of Florida, June term, A. D. 1904.—The State of Florida, *ex Rel.* the Railroad Commissioners *et al.* Plaintiff, *v.* Seaboard Air Line Railway, Defendant.
>
> "This cause being at issue and being set for trial on this day, come now the parties by their counsel, and the defendant produces and files as evidence the annual report of the Seaboard Air Line Railway for the year ending June 30, 1904, filed with the Railroad Commission, and the seventh annual report of the Railroad Commission; and the plaintiff's counsel announcing that he would introduce no testimony, thereupon the case is continued for argument until to-morrow."

It is too late now to raise a point that appellant's books were not evidence. They were treated as such by the court, see its opinion, pp. 32–33, Rec. Case 156.

The opinion of the Florida Supreme Court upon the facts is *prima facie* correct; but this presumption in favor of its correctness is rebutted when we point out that the

court totally overlooked evidence which was before it. For example. In this opinion the court said, on page 32:

> "To questions asked by the Railroad Commission as to the expenses of fuel and other operating items, the respondent replied that it could not answer by States."

The mistake of the court appears from the fact that the court has already stated in this same opinion on page 32 as follows:

> "The only proof offered was the sworn report of the railway company to the Railroad Commission of Florida, for the year ending June 30, 1904. This report was admitted without objection."

The idea then in the mind of the court that "to questions asked by the Railroad Commission as to the expenses of fuel and other operating items the respondent replied that it could not answer by States," could only have come from the fact that, as stated by counsel in argument, this case was argued along with the Atlantic Coast Line Case No. 152, and the court must have had in mind here some questions asked by the Commission in that case.

On page 66 (red figures) of Case 156, among other operating expenses in the State of Florida is given the cost (near bottom of page) of "conducting transportation," which would include fuel.

Another error of counsel for appellee was the statement he made in reference to the showing of stocks owned on page 62 (red figures) and bonds owned, on page 63, Rec. 156. We understood him to argue that in some way or other these figures indicated excessive prices the appellant company had paid for its property. In point of fact the figures have no relation whatever to moneys or sums paid out by the appellant company, but, on the face of

the two pages, it is perfectly clear that the railway company was obeying the order of the Railway Commission and of the law of Florida, which provides in its Railroad Commission, 1899, Chapter 1700, No. 39, in its 10th section, subdivision 4, that railway companies shall in their statements give "the amount of assets and liabilities." Here it was giving a full account of all the property it owned, productive and unproductive. The two items at the top of page 62 show that the company has on hand of its own common stock $500,000, and of its preferred stock $11,000,000, and as to this stock, it was either never issued or if issued was bought back, and no dividends were declared upon it.

On only one item of the railroad stocks it owns did it receive any dividends during the year, and that was on the Richmond and West Line stock, where the dividend was $17,800. All the rest of its railroad stocks were unproductive, as were all of its other stocks lower down on the page, except one item, Old Dominion S. S. Co., upon which it received $12,600. The same is true of the bonds owned, on the next page. All its railroad bonds there were unproductive, except one item, those of the Florida West Shore Railway, upon which it received $9,875. So also of its other bonds on that same page. The company received as a dividend upon its bonds of the Florida Publishing Company $280. Much comment was made on this; but there can be no reason why a railroad company should not own one-third interest in a little publishing company returning a dividend of $280, which must be greatly less than the amount required to pay for the printing of the company in Florida. And the moneys received on this property were used of course to help in payments on bonded indebtedness hereafter alluded to.

Again, the court in its opinion totally overlooked the

most important item to be considered in deciding whether rates were confiscatory—to-wit, mortgage indebtedness. And here we call attention to the opinion of Justice Brewer (*Ames* v. *Union Pac. Ry. Co.* 64 Fed. Rep. 177) quoted on page 37 of our original brief, as follows:

> "It is not easy to always determine the value of railroad property, and *if there is no other testimony in respect thereto* than the amount of stock and bonds outstanding, or the construction account, it may be fairly assumed that one or other of these represents it, and computation as to the compensatory quality of rates may be based upon such amounts."

And the opinions of Justices Brewer and McKenna, cited on pages 21, 22 and 23, as follows:

> "While, by reducing the rates, the value of the stockholders' property may be reduced, in that less dividends are possible,—and that power of the legislature over property is conceded,—yet, if the rates are so reduced that no dividends are possible, and especially if they are such that the interest on the mortgage debt is not earned, then the enforcement of the rates means either confiscation, or compelling, in the language of the Supreme Court, the corporation to carry persons or property without reward."

In *Southern Pac. Co.* v. *Board of Railroad Commissioners*, 78 Fed. Rep. 263, Mr. Justice McKenna says:

> "Interest on bonded debt is held by all authorities to be a proper charge upon income," etc.
>
> "From this showing it is perfectly evident that there should be *no reduction of rates* of the Southern Pacific Company either regarding the Pacific Company or the California roads unless its business increase."

Our original brief discusses fully "Interest on the Funded Debt—How Related to Earnings in Florida," be-

ginning on page 25, and ending at the top of page 30. This discussion shows, as we think, clearly that if we are allowed to earn enough money by our rates to pay our mortgage indebtedness, the earnings in Florida are totally insufficient to pay the share of that mortgage debt properly allotted to Florida, no matter whether the item of $125,000 taxes in Florida be considered as assessable wholly on the road in Florida for the purposes of this case, or partly on the road in Florida only, or entirely on the road as a system, Florida being reckoned as not responsible for any share of it; and if this fact is established, then any lowering of rates on a material portion of our freight was confiscatory in its nature.

As to the contention of counsel that the order did not reduce rates on phosphates, we do not consider that this needs any reply. Such a contention involves the idea that the order is nugatory, and if it was, of course the Commission knew it and the railroad company also knew it when it appealed from the order.

In conclusion we venture to re-state our proposition as to the rates on phosphates and to call special attention to the *Lake Shore & M. S. R. Co.* v. *Smith*, 173 U. S. 684, L. E. 43, p. 858. In that case Justice Peckham delivering the opinion of the court said that although a corporation

> "is under government control, that control must be exercised with due regard to constitutional guaranties for the protection of its property,"

and later, speaking of the Michigan law allowing purchasers to buy 1,000 mile tickets for less than the standard rate, to be good for a certain period and to include the purchaser's family, he said:

> "This is not a reasonable regulation."

We do not propose that this court shall "substitute its

judgment for the judgment of the Florida Commission," nor do we contend that this court could correct even a very glaring error of judgment committed by the Commission in the exercise of its judgment. What we contend for is that the Florida Commission in regulating rates ought to have some regard for the rules that govern the cost of transportation and that that Commission can not lay down and proceed upon a rule that is arbitrary and has no relation whatever to the cost of transportation, and that it is unreasonable and arbitrary to fix a price at which a carrier shall be compelled to transport freight by adopting a method of rate fixing which leaves entirely out of consideration the question of cost. Our proposition is this: *A constitutional method of rate fixing only becomes unconstitutional when in its results it becomes confiscatory. This method is in itself confiscatory because it is purely arbitrary.* This court judicially knows (see opinion of Mr. Justice Brewer in *Chicago, M. & St. Paul R. Co.* v. *Tompkins*, 176 U. S. 168, cited on p. 7 of our brief) that a long haul should be cheaper than a short haul, and for the same reasons it knows that freights in car-load lots can be carried more cheaply than by the ton. In the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, it was decided that an ordinance of the city of San Francisco was unconstitutional because it was arbitrary.

In the case of *Lockner* v. *New York*, 198 U. S. 45, this court decided that the ten-hour law of New York was

> "not a legitimate exercise of the police powers of the State but an *unreasonable, unnecessary and arbitrary interference* with the rights and liberty of the individual to contract, etc."

Mr. Justice Harlan in his dissenting opinion clearly indicated that he and the other members of the court agreeing with him would have decided in the same way if

in their opinion, the act had been unreasonable, unnecessary and arbitrary. The dissent was placed upon the ground that the minority of the court thought the act in question bore a

> "'real or substantial relation' to the protection of health as involved in the daily work of the persons, male and female, engaged in baking and confectionery establishments."

We do not think we could put this case more forcefully than by using the words of this opinion. The arbitrary method adopted by the Florida Commission in fixing the rates on phosphates, we insist, bore "no real or substantial relation" to the cost of the carrying they were requiring the railway company to do. So the question narrows itself down to this. Can a Commission, in performing the duty of fixing railroad freight rates on transportation, adopt a method that leaves the question of cost out of consideration? Is the power of a such a Commission unlimited and absolutely arbitrary? A Commission can compel a railroad company to have some of its trains stop every day at every station. Can it go farther and compel a railroad company to stop all of its passenger trains at all stations? If there is any limit to the power of a State Railway Commission, any line it can not cross, that line must be drawn where the action of a Commission becomes unreasonable and arbitrary.

If the court should reach the conclusion that such a regulation was unreasonable and arbitrary would there be any need to go farther in order to reach the conclusion that the regulation was unconstitutional? In such case, we insist that the case of *Lake Shore* v. *Smith* would be a precedent precisely in point. In that case, the court, having concluded that the act in question reducing certain fares to two cents per mile was

> " discriminatory, exceptional and partial legislation,"

decided that it was unconstitutional and refused expressly to consider the question as to whether a reduction of all passenger fares to two cents a mile would have been confiscatory. In other words, that act, on its face, was arbitrary and unconstitutional, just as we insist this method of fixing rates is, on its face, arbitrary and unconstitutional.

A method of fixing rates, a rule adopted for that purpose must be influenced by some motive which a Commission can properly entertain, and which is consistent with a due regard for the rights of the carrier with whose property it is dealing. If the rule has no regard whatever for these rights, has no relation to the costs to be incurred, then on its face it is a rule or method that takes away property *without due process of law, or without any assignable reason, which is the same thing.* The rule adopted here having on its face no regard for the difference between long hauls and short hauls, or for the difference between carrying car loads and tons, takes away property without due process of law. It is not only arbitrary, but it is *exceptional and unprecedented.* It stands here naked, and as such must be approved, or at least tolerated, by affirming the decree of the court below, or it must be disapproved by a reversal.

What was the "motif" of this rule? In our original brief we tried to guess. It seems that we were mistaken, as counsel says "phosphate" means "phosphate rock," which is not a fertilizer until it is reduced. After all the discussion can the court guess what was the reason, not for lowering the rates, but for the exceptional method resorted to? And further, if the *motive* for the *method* can not be surmised, is not the method arbitrary?

Respectfully submitted,

GEO. P. RANEY,
HILARY A. HERBERT,
BENJ. MICOU.

NOTE.—We have mailed a copy of this brief to counsel for appellee.

NOTE.—Section 30 of Article XVI of the Constitution of the State of Florida (see page 69, Revised Statutes Florida, 1892) is as follows:

> "The legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures."

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

Seaboard Air Line Railway,
Plaintiff in Error,
vs.
The State of Florida upon the relation of W. H. Ellis, as Attorney General of said State, et al.
Defendant in Error.

No. 155.
Error to the Supreme Court of the State of Florida.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is before this Court on a writ of error to the Supreme Court of the State of Florida, in which an action of mandamus was instituted to enfore a schedule of freight tariffs for freight shipments from points in Florida to points in Florida over the Seaboard Air Line Railway, to apply to shipments from or destined to points on the Florida West Shore Railway, and from points on the Florida West Shore Railway to points on the Florida West Shore Railway.

The Railroad Commissioners, in prescribing the rates as set up in Exhibit A. of the alternative writ of mandamus (pp. 8 and 9 of record), acted in pursuance of Chapter 4700, Laws of Florida, p. 76 Acts of 1899.

The record shows all the proceedings in said suit, but the opinion on the merits of the case (p. 42 of the record) as put in issue by the fifth ~~annual~~ return, which return gives the nearest and the only semblance of a Federal queston, is based on the evidence taken before the Supreme Court of Florida on pp. 55 et seq. of the record.

The authority of the Railroad Commissioners, under the Constitution and Laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; the right of the State to enforce the orders of the State Railroad Commission by mandamus instituted originally in the Supreme Court of the State; the regularity of the proceeding before the Railroad Commission preliminary to the making of its orders; and the prima facie correctness, justice and validity of the orders of the Commission, and the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the prima facie validity of the orders of the Commission, —are, we understand, not questioned by the plaintiff in error, and are entirely manifest by reference to the Constitution and Laws of Florida, and cannot be reviewed by this Court.

ARGUMENT.

FIRST.

The first and second assignments of errors are based on the denial of the motion of the plaintiff in error to quash the alternative writ of mandamus. The motion was to the effect that the contract existing between the plaintiff in error and the Florida West Shore Railway, which is set up in the alternative writ (pp. 3 to 6 of the record), made the schedule of rates sought to be enforced inapplicable to the West Shore Railway. In denying the motion the court only construed

a rule adopted by the Railroad Commissioners in pursuance of Chapter 4700 of the Laws of Florida. The court's construction of that rule is final, since no Federal question is involved. If it were contended that the denial of the motion was based on a construction of the contract and not of the rule, this decision would be equally as final so far as this case is concerned.

Sayword v. Denny, 158 U. S. 180;
San Francisco v. Scott, 111 U. S. 768;
Rockhold v. Rockhold, 92 U. S. 129;
Leysen v. Davis, 170 U. S. 36;
Capital Nat. Bank v. Cadiz First Nat. Bank, 172 U. S. 425;
Wabash R. Co. v. Pearce, 192 U. S. 185.

SECOND.

The third, fourth, fifth and sixth assignments of errors are based solely on questions of procedure. They raise questions of State practice, which are concluded so far as this hearing is concerned.

Tripp v. Santa Rosa St. R. Co., 144 U. S. 126.
Iowa Cent. R. Co. v. Iowa, 160 U. S. 389;
Grand Rapids etc. R. Co. v. Butler, 159 U. S. 87;
Wood v. Brady, 150 U. S. 18;
Gibson v. Mississippi, 162 U. S. 565;
French v. Hopkins, 124 U. S. 524;
Loeber v. Schroeder, 149 U. S. 580;
Thorington v. Montgomery, 147 U. S. 490;
McNulty v. California, 149 U. S. 645;
Northern Pacific R. Co. v. Patterson, 154 U. S. 130;
O'Neill v. Vermont, 144 U. S. 323;
Hibbin v. Smith, 191 U. S. 310;
Smith v. Indiana, 191 U. S. 138.

THIRD.

The seventh to thirteenth assignments of errors are in effect the same, and all are based on the final decision of the Supreme Court of Florida, in which the opinion filed in the State ex rel. Railroad Commission v. Atlantic Coast Line R. Co., 37 South. Rep. 314 is adopted as the opinion of the court in this case. The fourteenth is a blanket assignment which covers all the others.

No Federal question of law is raised by any of these assignments. The Supreme Court of Florida found the facts as stated in its opinion, and that finding is conclusive in this Court.

Hall v. Jordan, 15 Wall. 393;
Carpenter v. Williams, 9 Wall. 785;
Republican River Bridge Co. v. Kansas Pac. R. Co., 92 U. S. 315;
Martin v. Marks, 97 U. S. 345;
Kenney v. Effinger, 115 U. S. 577;
Quimby v. Boyd, 128 U. S. 488;
Dower v. Richards, 151 U. S. 658;
Hedrick v. Atchison, etc. R. Co., 167 U. S. 673;
Atchison, etc. R. Co. v. Matthews, 174 U. S. 96
Backus v. Fort St. Union Depot Co., 169 U. S. 557;
Egan v. Hart, 165 U. S. 188;
In re Buchanan, 158 U. S. 31;
Chicago, etc. R. Co. v. Chicago, 166 U. S. 226;
Missouri, etc. R. Co. v. Haber, 169 U. S. 513.

The Supreme Court of Florida, in their original jurisdiction of mandamus cases, are the judges of the fact as well as of the law.

> The State ex rel County Commissioners of Columbia County v. County Commissioners of Suwannee County, 21 Fla. 1.

The Supreme Court of Florida in their opinion in this case, did not enunciate any questionable principles of law. The opinion is limited almost, if not quite, to their findings of facts based on the testimony of the plaintiff in error before them.

According to the decisions of this court, the plaintiff in error has not shown sufficient facts to reverse the judgment of the Supreme Court of Florida, if the court should decide, contrary to our contention, and that the points raised in the case are questions of mixed law and fact and properly reviewable by this court.

> Chicago M. & St. R. Co. v. Minn., 134 U. S. 418;
> Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339;
> Reagan v. Farmers Loan & T. Co., 154 U. S. 362;
> St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649;
> Covington & L. Tr. Co. v. Sanford, 164 U. S. 578;
> Smyth v. Ames, 169 U. S. 466;
> San Diego L. & T. Co. v. Jasper, 189 U. S. 439.

If this court could go back of the findings of fact of the Supreme Court of Florida, it would be found that the Seaboard Air Line Railway introduced in evidence to sustain its Plea or Return absolutely nothing even tending to sustain the same, confining itself to the introduction in evidence of two printed reports, the one being a report of that company filed with the Florida Railroad Commission for the year ending June 30th, 1904, and the other the report of the State Railroad Commission for the year ending March 1st, 1904. Neither of those reports have the slightest relevancy to the issue in the cause.

It is therefore respectfully submitted that the decision of the Supreme Court of Florida should be affirmed.

W. H. ELLIS Atty Genl.
J. M. BARRS, Special Counsel for defendant in error.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1905.

Seaboard Air Line Railway, Plaintiff in Error, vs. The State of Florida upon the relation of W. H. Ellis, as Attorney General of said State, et al. Defendant in Error.	No. 156. Error to the Supreme Court of the State of Florida.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is before this Court on a writ of error to the Supreme Court of the State of Florida, in which an action of mandamus was instituted to enforce rates on phosphate from points in the State of Florida to points within the said State over all the lines of railway of the plaintiff in error wholly or in part within the State of Florida.

The Railroad Commissioners, in prescribing the rates as set up in Exhibits A. and B. (pp. 5 to 7, inclusive, of record), acted in pursuance of Chapter 4700, Laws of Florida, p. 76 Acts of 1899.

The record shows all the proceedings in said suit, but the opinion on the merits of the case will be found on pp. 32 and 33, inclusive, of the record, which is based on the evidence taken before the Supreme Court of Florida, on p. 44 et seq. of the record.

The authority of the Railroad Commissioners, under the Constitution and Laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; the right of the State to enforce the orders of the State Railroad Commission by mandamus instituted originally in the Supreme Court of the State; the regularity of the proceeding before the Railroad Commission preliminary to the making of its orders; and the prima facie correctness, justice and validity of the orders of the Commission, and the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the prima facie validity of the orders of the Commission, —are, we understand, not questioned by the plaintiff in error, and are entirely manifest by reference to the Constitution and Laws of Florida, and cannot be reviewed by this Court.

ARGUMENT.

FIRST.

The first assignment of error is based on the overruling of the demurrer of the plaintiff in error to the alternative writ of mandamus. The opinion of the Supreme Court of Florida and the statement of the cause will be found on pp. 10 to 19, inclusive, of the record.

It is not deemed necessary to argue this point. This is a question of State practice which is concluded so far as this hearing is concerned.

Tripp v. Santa Rosa St. R. Co., 144 U. S. 126.
Iowa Cent. R. Co. v. Iowa, 160 U. S. 389;
Grand Rapids etc. R. Co. v. Butler, 159 U. S. 87;
Wood v. Brady, 150 U. S. 18;
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O'Neill v. Vermont, 144 U. S. 323;
Hibbin v. Smith, 191 U. S. 310;
Smith v. Indiana, 191 U. S. 138.

SECOND.

This court is precluded from reviewing the judgment of the Supreme Court of Florida on the second assignment of error. See cases cited above.

THIRD.

The third, fourth, fifth, sixth and seventh assignments of errors are in effect the same, and all are based on the final decision of the Supreme Court of Florida, which is contained in the record on pp. 32 and 33 The eighth is a blanket assignment which covers all the others. No Federal question of law is raised by any of these assignments. The Supreme Court of Florida found the facts as stated in its opinion and that finding is conclusive in this court.

Hall v. Jordan, 15 Wall. 393;
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Republican River Bridge Co. v. Kansas Pac. R. Co., 92 U. S. 315;
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Kenney v. Effinger, 115 U. S. 577;
Quimby v. Boyd, 128 U. S. 488;
Dower v. Richards, 151 U. S. 658;
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See pp. 32, 33 of the record.

According to the decisions of this court, the plaintiff in error has not shown sufficient facts to reverse the

judgment of the Supreme Court of Florida, if the court should decide, contrary to our contention, and that the points raised in the case are questions of mixed law and fact and properly reviewable by this court.

Chicago M. & St. R. Co. v. Minn., 134 U. S. 418;

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St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649;

Covington & L. Tr. Co. v. Sanford, 164 U. S. 578;

Smyth v. Ames, 169 U. S. 466;

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If this court could go back of the findings of fact of the Supreme Court of Florida, it would be found that the Seaboard Air Line Railway introduced in evidence to sustain its Plea or Return absolutely nothing even tending to sustain the same, confining itself to the introduction in evidence of two printed reports, the one being a report of that company filed with the Florida Railroad Commission for the year ending June 30th, 1904, and the other the report of the State Railroad Commission for the year ending March 1st, 1904. Neither of those reports have the slightest relevancy to the issue in the cause.

It is therefore respectfully submitted that the decision of the Supreme Court of Florida should be affirmed.

W. H. ELLIS Atty Genl.
J. M. BARRS, Special Counsel for defendant in error.